

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE JAMES, et al.	:	CIVIL ACTION
	:	NO. 96-7683
v.	:	
	:	
CHICHESTER SCHOOL BOARD, et al.	:	
- - - - -	:	- - - - -
SANTA FRATTARELLI, et al.	:	CIVIL ACTION
	:	NO. 97-1663
v.	:	
	:	
JOSEPH P. KELLY, et al.	:	

MEMORANDUM AND ORDER

Fullam, Sr. J.

March , 1998

The defendants have filed a motion for a stay of this Court's Order dated January 30, 1998, pending appeal to the Third Circuit Court of Appeals from that order. The motion will be denied.

Throughout this litigation, it has been conceded by all parties that the nine incumbent school directors of the Chichester School District were elected in violation of the one man-one vote requirements of the United States Constitution (and also in violation of the Pennsylvania School Code). The only disputes, either in this litigation or in the related state court litigation, concern the method of correcting the irregularity, and the timing of the corrective measures.

The defendants, unfortunately, seem determined to postpone the necessary corrective measures as long as possible,

and to prolong the tenure in office of those school directors who support the current administration of the schools, at the expense of the constitutional rights of the voters.

The parties to the earlier state court litigation (not including the plaintiffs in the cases in this court) agreed upon a redistricting plan which violated both the Constitution and state law (the regions were almost certainly not equal in population, and the districts were not contiguous). It was to prevent the implementation of that plan that the current litigation in this court was instituted.

The January 30, 1998 Order, which defendants now seek to stay, merely requires that the constitutional violations be remedied promptly by means of a special election to be held in conjunction with the May 1998 primary. Throughout the hearing in this court, plaintiffs wanted an earlier special election, and it was the defendants who insisted that the election should take place at the May primary. At no time have the defendants ever sought to justify the continued tenure in office of the incumbent school directors beyond the date when their successors could feasibly be constitutionally chosen.

In order to obtain a stay, defendants are required to make a clear showing that there is a substantial likelihood that the injunction would be vacated on appeal, that they will suffer irreparable injury in the absence of a stay, that their opponents

will not suffer serious injury if a stay is granted, and that the public interest would best be served by a stay. Defendants, in my view, fail to meet any of these requirements.

Since there is no dispute about the current constitutional violations, defendants will be hard-pressed to establish on appeal that the violation should not be remedied promptly. The Order appealed from does not mandate a particular redistricting plan; it merely declares that either of the two plans submitted by the plaintiffs would pass constitutional muster. The parties are enjoined to implement the "primary plan" submitted by plaintiffs unless the state court approves some other constitutionally-acceptable plan for timely implementation.

It is indeed difficult to perceive any detriment to the defendants if a stay is denied. They have no valid interest in delaying corrective action, nor do they have any legitimate interest in evading constitutional requirements through gerrymandering for the protection of incumbents. The state court is free to adopt any constitutionally-valid plan the defendants submit; this Court's January 30th Order does not tell the state court what to do, but merely provides an alternative to further litigation of the matter, if the state court prefers that route.

The Motion for Stay will be denied.

An order follows.

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ORDER

AND NOW, this            day of March, 1998, upon  
consideration of the Defendants' Motion for Stay Pending Appeal,  
IT IS ORDERED:

That the motion is DENIED.

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John P. Fullam, Sr. J.